

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

KENNETH W. HOLCOMB, #0727825

§

v.

§

CIVIL ACTION NO. 2:21-cv-00439-JRG-RSP

ANGELA R. SMOAK, ET. AL.

§

ORDER OF DISMISSAL

Plaintiff Kenneth W. Holcomb, a prisoner confined within the Texas Department of Criminal Justice (TDCJ), proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit. The complaint was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On January 24, 2025, Judge Payne issued a Report, (Dkt. #20), recommending that Plaintiff's lawsuit be dismissed, with prejudice, as frivolous and until the *Heck* conditions are met. A copy of this Report was sent to Plaintiff at his last address. To date, however, Plaintiff has neither filed objections nor otherwise responded to the Report.


Because objections to Judge Payne's Report have not been filed, Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (holding that where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #20), is **ADOPTED** as the opinion of the Court. Plaintiff's lawsuit is dismissed, with prejudice, as frivolous and until the *Heck* conditions are met. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 26th day of February, 2025.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE